IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.118 OF 2006
IN
SUIT NO.2287 OF 1985

State Bank of India ..Plaintiffs

Vs.

Bombay Latex and Dispersions
P.Ltd. and Ors. ..Defendants

Mr.Kevic Settalwad i/b Nanu Horumasjee for the defendant no.3 and 5

Ms.Prachi Khandge i/b P.K.Shroff for the defendant no.2a and 6

CORAM : S.U.KAMDAR, J
DATED : 1ST MARCH, 2006

P.C.:

1. Motion made returnable forthwith. Heard the parties.

2. The present motion is thoroughly misconceived. Defendant no.3 and 5 were present on 17.10.05 but they did not tender the written statement when written statement of defendant no.6 was taken on record. However, they made an application that written statement be taken on record before S.R.Sathe, J and by order dt.23.11.05, the said application was rejected. Thereafter, they preferred an appeal against the

said order and the Division Bench by an order dt.16.12.05 has dismissed the appeal. Thus, the order refusing to take written statement on record has achieved finality. There is no further appeal filed against the order of the Division Bench. Additional affidavit filed by the defendant no.3 and 5 also indicates that by order dt. 12.1.06, decree is also passed against defendant no.3 and 5. It is thereafter now that the present ad interim application is moved for taking the written statement on record.

3. In the aforesaid circumstances, question of now taking written statement on record does not arise and in any event when the Division Bench has refused to take written statement on record, it was not permissible on the part of defendant no.3 to 6 to take out the present notice of motion for identical relief which is expressly rejected both by the learned single Judge and the Division Bench. Motion is, therefore, thoroughly misconceived. Motion is accordingly dismissed. Defendant no.3 and 5 to pay cost quantified at Rs.10000 to the Maharashtra State Legal Services Authority within

two weeks.